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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,087	10/19/2001	Leonard Arnold Duffy		9503

7590 05/03/2005
Leonard Duffy
P O Box 99
Hinesburg, VT 05461

EXAMINER

BRITTAIN, JAMES R

ART UNIT PAPER NUMBER

3677

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/015,087	Applicant(s) DUFFY, LEONARD ARNOLD	
	Examiner James R. Brittain	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 3-7,9-11,14-32,35-43,48,49 and 52-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,8,12,13,33,34,44-47,50,51 and 55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restriction

Claims 35-43, 48 and 49 are withdrawn from consideration pursuant to 37 CFR 1.142(b), as being drawn to a non-elected invention, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in Paper No. 6.

Additionally, claims 3-7, 9-11, 14-32, 52-54 are withdrawn from consideration pursuant to 37 CFR 1.142(b) as being drawn to non-elected species without traverse, there being no allowable generic or linking claim. Upon allowance of a generic claim and if all article claims are amended to include the subject matter of the generic claim, then all species readable on the generic claim will be rejoined.

Claims 48 and 49 are withdrawn for the reason cited in the Office action mailed September 9, 2004 and also are withdrawn because of the unclear nature of the claimed invention and their apparent tie to the method of making the device that was subject to the prior restriction requirement. While claim 48 identifies the invention as “A method of fastening two portions ...” with several steps utilizing the term “providing”, it is only in claim 49 that the full extent of applicant’s use of the term “providing” is exposed, wherein the apparatus consisting of interengaging dies is explicitly claimed and places these claims outside the article claims elected by applicant.

Applicant queries in the communication of October 8, 2004 the conditions under which the method of making claims would be rejoined. Method of making claims would be rejoined if all process of making claims include all of the limitations of the allowed article claim and are allowable on the basis of 35 U.S.C. 112.

Priority

The petition decision mailed December 30, 2003 dismissed applicant's petition to obtain priority based upon the two prior provisional applications. There is no renewed petition or new petition decision. Therefore, applicant does not have priority based on the provisional applications and the effective filing date of this application is October 19, 2001.

If applicant desires benefit of a previously filed application under 35 U.S.C. 119(e), specific reference to the earlier filed application must be made in the instant application. For benefit claims under 35 U.S.C. 120, 121 or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of the applications. This should appear as the first sentence(s) of the specification following the title, preferably as a separate paragraph unless it appears in an application data sheet. The status of nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression "now Patent No. ____" should follow the filing date of the parent application. If a parent application has become abandoned, the expression "now abandoned" should follow the filing date of the parent application. While applicant has provided the reference applicant has not fulfilled the requirement below of a granted petition.

If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be

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submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Specification Objections

The priority statement is objected to because applicant has not established priority as indicated in the petition decision mailed December 30, 2003. Applicant's petition was dismissed. Correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 8, 12, 13, 33, 34, 44, 45, 47, 50, 51 and 55 are rejected under 35 U.S.C.

§103(a) as being unpatentable over Duffy (US 5983467) in view of Allan (US 5640744).

Duffy (figures 1-8) teaches a slidingly engageable fastening device operable upon application of a relative shearing force, comprising: a first portion that includes: a first base having a first basal surface; and a plurality of first undercut segments spaced from the first basal surface; and a second portion for slidingly engaging with the first portion upon application of a relative shearing force with respect to the first and second portions, the second portion including: a second base having a second basal surface; a plurality of stems each having a first end attached to the second base and a second end distal from the second basal surface; and at least one second undercut segment attached to each of the plurality of stems at the second end and extending away from the each stem, thereby providing an aperture for receiving adjacent pairs of the first undercut segments between adjacent pairs of the stems. The difference is that the base lacks fenestrations. It would have been obvious to modify the base of the device of Duffy so as to have fenestrations in view of Allan (figure 21) teaching that it is desirable to place fenestrations 141 in the base for ease of attaching to an object by sewing, a common expedient. Applicant is familiar with the teachings of his prior patent and is fully aware of the sliding engagement taught by therein. The placement of apertures in the base is a common expedient for attachment such as that evidenced by Allan and one having ordinary skill in the art would readily recognize the use of apertures for attachment and applicant's patent shows the use of sewing to attach the base to an object. The bilateral disposition of stems is taught in applicant's prior patent. As to claim 45,

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the combination with Allan suggests using the fastener on different sections or portions of footwear.

Claim 46 is rejected under 35 U.S.C. §103(a) as being unpatentable over Duffy (US 5983467) in view of Allan (US 5640744) as applied to claim 45 above, and further in view of Sink (US 5943705).

Further modification of the fastener of Duffy as modified by Allan such that the interengaging portions are on a strap spaced by an elastic section would have been obvious in view of Sink (figures 3, 4 as described in the abstract) teaching the use of two non-elastic portions positioned at either end of an elastic portion with the two non-elastic portions including hook and loop fasteners for fastening the two non-elastic portions to each other so as to have a readily adjustable strap.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain
Primary Examiner
Art Unit 3677

JRB